

1
2
3
4
5
6
7 UNITED STATES DISTRICT COURT
8 FOR THE EASTERN DISTRICT OF CALIFORNIA
9

10 UNITED STATES OF AMERICA,
11 Respondent,
12 v.
13 MATTHEW MULLER,
14 Movant.
15

No. 2:15-cr-0205-TLN-EFB P

FINDINGS AND RECOMMENDATIONS

16 Movant Matthew Muller requests that the court stay proceedings on his motion under 28
17 U.S.C. § 2255 pending resolution of a state criminal prosecution against him. ECF No. 104.
18 Respondent opposes an indefinite stay but not a limited 45-day stay. ECF No. 107. For the
19 reasons that follow, the stay must be denied.

20 **I. Governing Law**

21 “A trial court may, with propriety, find it is efficient for its own docket and the fairest
22 course for the parties to enter a stay of an action before it, pending resolution of independent
23 proceedings which bear upon the case.” *Leyva v. Certified Grocers of Cal., Ltd.*, 593 F.2d 857,
24 863 (9th Cir. 1979). However, habeas proceedings are supposed to be expeditious, so stays –
25 particularly indefinite and potentially lengthy stays – are generally not appropriate. *Yong v. INS*,
26 208 F.3d 1116, 1120 (9th Cir. 2000) (“[A]lthough a short stay may be appropriate in a habeas
27 case to await a determination in a parallel case in the same court, . . . we have never authorized, in
28 the interests of judicial economy, an indefinite, potentially lengthy stay in a habeas case.”).

1 In determining whether to stay an action, the court must balance these competing
2 interests: (1) possible damage to the party opposing the stay if a stay is granted; (2) hardship to
3 the moving party if a stay is denied; and (3) “the orderly course of justice measured in terms of
4 the simplifying or complicating of issues, proof, and questions of law which could be expected to
5 result from a stay.” *CMAX, Inc. v. Hall*, 300 F.2d 265, 268 (9th Cir. 1962); *see also Savage v.*
6 *United States*, 225 F. Supp. 3d 1159, 1161 (C.D. Cal. 2016).

7 **II. Analysis**

8 Muller advances three justifications for a stay: (1) disclosure in this action of privileged
9 attorney-client information to assess whether trial counsel rendered ineffective assistance could
10 be used against Muller in a pending state prosecution that “arise[s] from the same alleged
11 conduct” as this case; (2) trial counsel is likely to misrepresent facts in his affidavit to the court
12 and rebutting his misrepresentations will require Muller to disclose information that could harm
13 his defense of the state case; and (3) absent a stay, Muller will have to disclose information about
14 the mental defense he asserts that trial counsel should have pursued, which will tip his hand in the
15 state case and thus give state prosecutors an unfair advantage.

16 It is clear that Muller believes he will be harmed if the case goes forward, but his claims
17 are difficult to assess. The court has ordered that trial counsel’s declaration be initially filed
18 under seal and indicated its intention to enter a protective order governing potentially privileged
19 materials. ECF No. 103. Muller argues that the state court could possibly admit information
20 covered by the protective order. But this is a speculative and highly uncertain possibility.
21 Moreover, Muller has not informed the court (and he could have done so by seeking to file the
22 information under seal) just what the privileged information is or how it could be used against
23 him. The court simply has no basis for crediting Muller’s conclusory claim that the information
24 necessary to adjudicate this § 2255 motion could be used against him in the state case. Nor has
25 he provided any basis for believing that the federal attorneys assigned to this matter would breach
26 the protective order and share protected information with state authorities. Muller provides no
27 expiration date for the stay or, in fact, any information about the state case beyond that it “arise[s]
28 from the same alleged conduct” as this case. Simply put, the motion to stay consists of vague

1 claims of possible harm but does not provide the court with concrete information from which it
2 can assess these claims.


3 Weighed against these vague claims are the government's interest in moving the case
4 forward and the interest of justice in adjudicating Muller's claims before witnesses' memories
5 fade or evidence becomes lost or otherwise unavailable. Absent specific information from Muller
6 explaining how exactly he is likely to be prejudiced in his state case, the court should not
7 indefinitely stay this action. For the same reasons, there is no cause to delay the case by 45 days,
8 as suggested by the government, or by 14 days, as Muller alternatively requests (while he seeks
9 interlocutory review of any order adopting this recommendation). Trial counsel's affidavit is to
10 be filed under seal. A protective order governing attorney-client privileged information will issue
11 thereafter. If Muller finds that he must provide information to the court that he believes would
12 harm his state defense, he may seek to provide that information under seal as well. With these
13 protective measures in place and no concrete facts from which to assess Muller's claims of
14 prejudice, a stay is unwarranted at this time.

15 **III. Recommendation**

16 Accordingly, it is hereby RECOMMENDED that Muller's July 17, 2019 motion to stay
17 these proceedings (ECF No. 104) be DENIED without prejudice.

18 These findings and recommendations are submitted to the United States District Judge
19 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen days
20 after being served with these findings and recommendations, any party may file written
21 objections with the court and serve a copy on all parties. Such a document should be captioned
22 "Objections to Magistrate Judge's Findings and Recommendations." Failure to file objections
23 within the specified time may waive the right to appeal the District Court's order. *Turner v.*
24 *Duncan*, 158 F.3d 449, 455 (9th Cir. 1998); *Martinez v. Ylst*, 951 F.2d 1153 (9th Cir. 1991).

25 DATED: August 6, 2019.

26 
27 EDMUND F. BRENNAN
28 UNITED STATES MAGISTRATE JUDGE